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**UTAH LABOR COMMISSION**

**VICTOR STEVENS,**

**Petitioner,**

**vs.**

**STANDARD DRYWALL and SEA  
BRIGHT INSURANCE COMPANY,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S ORDERS**

**Case No. 08-0007**

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Victor Stevens asks the Utah Labor Commission to review two orders issued by Administrative Law Judge La Jeunesse. The first order denied Mr. Stevens' request for appointment of a physician to provide medical evidence to support Mr. Stevens' claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated. The second order dismissed Mr. Stevens' claim for benefits for lack of supporting medical documentation.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

On December 31, 2007, with the assistance of his attorney, Mr. Stevens filed an Application For Hearing with the Labor Commission to obtain medical benefits and permanent disability compensation from Standard Drywall and its insurance carrier, Sea Bright Insurance Company (referred to jointly as "Standard" hereafter). The Application stated that Mr. Stevens had torn his left rotator cuff and fractured his left thumb and wrist while working for Standard. The Application also reported that Standard had paid temporary disability compensation for Mr. Stevens' injuries until September 2006.

Mr. Stevens' Application contained no medical documentation to support his claims for additional benefits. To overcome this lack of medical support, Mr. Stevens asked Judge La Jeunesse to appoint a physician to examine him. Mr. Stevens asserted that appointment of a physician was appropriate under the Labor Commission's Rule R602-2-2.C, because his treating physician "has refused to give an impairment rating" and "due to [Mr. Stevens'] lack of resources, a substantial injustice may occur" unless a physician was appointed. Mr. Stevens supported this request with an affidavit stating that he had no savings or assets. The affidavit also stated that Mr. Stevens was receiving union pensions and Social Security benefits in undisclosed amounts.

On January 7, 2008, Judge La Jeunesse denied Mr. Stevens' request for appointment of a physician. Judge La Jeunesse concluded that the scope of Rule R602-2-2 was limited to those cases where the parties had submitted "conflicting" medical opinions. Judge La Jeunesse reasoned that,

**ORDER AFFIRMING ALJ'S ORDERS**  
**VICTOR STEVENS**  
**PAGE 2 OF 4**

because there were no conflicting medical opinions in this case--in fact, no medical opinions at all -- Rule R602-2-2 did not permit him to appoint a medical panel.

Mr. Stevens requested Commission review of Judge La Jeunesse's decision. While that request for review was pending, Judge La Jeunesse entered another order dismissing Mr. Stevens' Application "without prejudice" for failure to submit supporting medical documentation. Mr. Stevens then filed a request for Commission review of that ruling as well.

**DISCUSSION**

Both of Mr. Stevens' requests for review argue that Rule R602-2-2 does not require conflicting medical opinions in every case as a prerequisite to appointment of a medical panel. Specifically, Mr. Stevens points out that Rule R602-2-2.C authorizes appointment of a physician if: 1) a treating physician has "failed or refused" to provide an impairment rating; or 2) a "substantial injustice" may occur unless a physician is appointed.

Section 34A-2-601 of the Utah Workers' Compensation Act grants ALJs discretion to obtain independent medical assistance in disputed workers' compensation and occupational disease cases. The Commission's Rule R602-2-2 describes the circumstances in which ALJs should exercise this discretion. Paragraph A of Rule R602-2-2 authorizes appointment of a medical panel if the parties have submitted conflicting medical reports on a significant medical issue. As Judge La Jeunesse has already noted, in this case, there are no "conflicting medical reports." Consequently, Judge La Jeunesse correctly concluded that paragraph A of Rule R602-2-2 does not support Mr. Stevens' request for appointment of a physician.

However, paragraph C of Rule R602-2-2 provides an alternative basis for appointment of a medical panel:

The Administrative Law Judge may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an impairment rating, and/or
2. A substantial injustice may occur without such further evaluation.

The Commission views paragraphs A and C of Rule R602-2-2 as applying to different situations. Subparagraph A applies when the parties have submitted medical opinions, but those opinions conflict. Paragraph C addresses two more unusual situations: 1) cases where a treating physician "fails or refuses" to provide an impairment rating; and 2) cases in which a "substantial injustice" may occur unless a physician is appointed.

**ORDER AFFIRMING ALJ'S ORDERS  
VICTOR STEVENS  
PAGE 3 OF 4**

Paragraph C is applicable only in exceptional cases. Otherwise the burden on the Commission's medical advisory system could prevent the Commission from obtaining needed medical evaluations in other cases where such evaluations are critically important. Consequently, the question now before the Commission is whether Mr. Stevens has shown that his circumstances are such that the Commission should provide him with a medical examination that might support his claim.

In support of his request for medical examination, Mr. Stevens has submitted a short affidavit that contains conclusionary statements regarding his financial situation and his inability to obtain medical information from his own doctors. Mr. Stevens has not explained the extent of his efforts to obtain medical information, such as his own contacts with his physicians or whether he requested assistance from Standard's insurance carrier or Commission staff. Likewise, Mr. Stevens provides no detail regarding his alleged lacks of financial means to obtain medical information to support his claim. To the contrary, Mr. Stevens' affidavit shows that he does have some sources of income, although the amount is not disclosed.

Under these circumstances, the Commission finds that Mr. Stevens has not established a sufficient basis for the Commission to exercise its discretion to appoint a physician to examine Mr. Stevens pursuant to paragraph C of Rule R606-2-2.

In summary, for the reasons stated in this decision, the Commission concurs with Judge La Jeunesse's denial of Mr. Stevens' request for appointment of an examining physician. Also, because this is the same issue that Mr. Stevens has raised in challenging Judge La Jeunesse's dismissal of his claim, the Commission also affirms that dismissal "without prejudice" to Mr. Stevens' refilling the claim when he obtains supporting medical documentation.

**ORDER**

The Commission affirms Judge La Jeunesse's order denying Mr. Stevens' motion for medical evaluation. The Commission also affirms Judge La Jeunesse's subsequent order dismissing Mr. Stevens' Application "without prejudice."

Dated this 23<sup>rd</sup> day of April, 2008.

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Sherrie Hayashi  
Utah Labor Commissioner

**IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.**

**ORDER AFFIRMING ALJ'S ORDERS**  
**VICTOR STEVENS**  
**PAGE 4 OF 4**

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.